



Panel: Comparative Judicial Practice

Honorable Zou Bihua, Honorable Peter J. Messitte, Honorable Jean-François Thony,
and John Fellas (Moderator)

Discussion Outline

I. Opening

- Introductions, Summary of Panel Objectives, Structure/Format – 5 Minutes
 - Moderator John Fellas

II. Panelist Comments

- Life of a Civil Case in France – Jean-François Thony – 10 minutes

Brief overview of how civil litigation proceeds in the French system, with focus on key structural differences between the U.S. and French systems: role of the pretrial and trial judge, implications of the inquisitorial system for the civil litigation process, how trial proceeds.

- Life of a Civil Case in China – Zou Bihua – 10 minutes

Brief overview of civil litigation in China, including the trial process, judges working on panels, the role of the adjudication/review committee, evidence gathering.

- The U.S. Perspective – Peter Messitte – 10 minutes

(i) Expanding upon comments from Jean-Pierre and Zou, reference to features of judicial practice in other countries (Latin America, Turkey) that may be relevant.

(ii) Observations from the perspective of a U.S. judge: the importance and practical relevance of differences among legal/judicial systems, essential differences and why they matter to a U.S. judge. Perhaps reference to Hague Child Abduction Convention's new international judicial panel.

III. Issues in Comparative Practice – Implications for Transnational Litigation

- John Fellas to pose questions to panel for discussion and open up to audience
- Discovery: One of the main differences between the common law and civil law systems concerns the discovery process.
 - U.S. discovery is very broad
 - How do foreign courts react to requests for U.S.-style discovery?
 - What is a U.S. court's attitude to issuing a letter of request?
- Outgoing Requests
 - Hague Evidence Convention
 - *Société Nationale Industrielle Aérospatiale v. United States District Court*, 482 U.S. 522 (1987)
 - *In re Automotive Refinishing Paint Antitrust Litigation*, 358 F.3d 288 (3rd Cir. 2004)
 - *Genira v. Refco.*, [2002] C.P. Rep. 15 (Ct. App.)
 - *The Procter & Gamble Company v. Bankers Trust Company and BT Securities*, (High Court of Justice, Queen's Bench Division, April 17, 1996) (unreported)
- Incoming Requests
 - 28 U.S.C. §1782

Experts: The role of court appointed experts in the civil law system versus party-appointed experts in the adversarial system.

- How do U.S. courts resolve conflicting experts?
- How do non-U.S. courts avoid placing undue weight on the opinion of a court appointed expert?

Tranjudicial Communications:

- How do courts deal with the clash of legal cultures in the discovery or other contexts?
- Is it appropriate for judges in different countries to discuss matters with each other in related cases?